Carmino Giannone, et al. 324 Jefferson Street Norristown, PA 19401	: : :		
Plaintiffs,	: : NO.:	13-5137	
v.	· :		
Clyde Neihart d/b/a Stealth Recovery/Right Turn Transportation, et al. 2111 Sycamore Drive Harrisburg, PA 17112 Defendants.	: : : : : : : : : : : : : : :	TRIAL DEMANDED	
AND NOW, this	day of	, 2013, upon consideration of	
Plaintiff's Motion for Sanctions, and any response thereto, a Rule is hereby issued upon			
Defendant and his counsel to show cause why Plaintiff's Motion should not be granted pursuant			
to 28 U.S.C. § 1927, F.R.C.P. 11(c)(2), & F.R.C.P. 11(c)(3), for Defendant and his counsel's			
Counterclaim (Docket No. 12), on	day of	, 2013, in Courtroom	
, at a.m./p.m., before the undersigned.			
	Joel H	I. Slomsky ,J.	

Carmino Giannone, et al. 324 Jefferson Street Norristown, PA 19401	: : :		
Plaintiffs,	: NO.: 13-5137		
V.	· : :		
Clyde Neihart d/b/a Stealth Recovery/Right Turn Transportation, et al. 2111 Sycamore Drive Harrisburg, PA 17112 Defendants.	: : : : : : : : : : : : : : : : : : :		
<u>ORDER</u>			
AND NOW, this day	of, 2013, upon consideration of		
Plaintiff's Motion for Sanctions, and any re	sponse thereto, and a hearing held thereon, it is		
hereby ORDERED and DECREED that Pla	intiff's Motion is GRANTED, and Defendant and his		
counsel are sanctioned for their Counterclaim (Docket No. 12) pursuant to 28 U.S.C. § 1927,			
F.R.C.P. 11(c)(2), & F.R.C.P. 11(c)(3), indi	ividually, jointly and severally, in the amount of		
\$5,000.00, payable to Plaintiff's counsel, w	ithin seven (7) days from the date of entry of this		
Order.			
AND IT IS SO ORDERED.			
	Joel H. Slomsky ,J.		

Carmino Giannone, et al. :

324 Jefferson Street

Norristown, PA 19401

Plaintiffs, : NO.: 13-5137

:

v. :

:

Clyde Neihart

d/b/a Stealth Recovery/Right Turn

Transportation, et al.

2111 Sycamore Drive

Harrisburg, PA 17112 :

JURY TRIAL DEMANDED

Defendants. :

<u>PLAINTIFF'S MOTION FOR SANCTIONS PURSUANT TO 28 U.S.C. § 1927, F.R.C.P.</u> <u>11(c)(2), & F.R.C.P. 11(c)(3)</u>

Incorporating by reference Plaintiff's attached Memorandum of Law, Plaintiff respectfully requests this Honorable Court sanction Defendant and his counsel for their counterclaim (Docket No. 12) pursuant to 28 U.S.C. § 1927, F.R.C.P. 11(c)(2), & F.R.C.P. 11(c)(3), in the amount of \$5,000.00, payable to Plaintiff's counsel, upon which Defendant and his counsel are individually, jointly and severally liable.

WHEREFORE, Plaintiff respectfully requests this Honorable Court grant Plaintiff's Motion for Sanctions consistent with the attached proposed Order.

WEISBERG LAW

/s/ Matthew B. Weisberg Matthew B. Weisberg, Esquire Attorney for Plaintiffs

Carmino Giannone, et al. :

324 Jefferson Street :

Norristown, PA 19401

Plaintiffs, : NO.: 13-5137

v.

:

Clyde Neihart

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Transportation, et al.

2111 Sycamore Drive : Harrisburg, PA 17112 :

: JURY TRIAL DEMANDED

Defendants. :

MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFF'S MOTION FOR SANCTIONS PURSUANT TO 28 U.S.C. § 1927, F.R.C.P. 11(c)(2), & F.R.C.P. 11(c)(3)

On October 14, 2013, Defendant filed his counterclaim. (Docket No. 12). As described in Plaintiff's motion to dismiss that counterclaim, Defendant's counterclaim is void of both a factual and legal predicate. (Docket No. 16 – incorporated by reference). As warned in Plaintiff's October 23, 2013 "safe harbor" correspondence with attached prospective instant motion to Defendant, that counterclaim is sanctionable pursuant to 28 U.S.C. § 1927, F.R.C.P. 11(c)(2), & F.R.C.P. 11(c)(3). (Exh. A).

Despite having been warned by both the "safe harbor" correspondence and, in fact, having been on notice by Plaintiff's Motion to Dismiss, Defendant and his counsel refuse to voluntarily dismiss that counterclaim. (Exh. B). This motion has been substantially 1 prospectively tendered and is timely filed.²

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¹ See, Exh. A.

² By Defendant and his counsel's response (Exh. B), they waive Rule 11's "safe harbor."

As indicated in the safe harbor correspondence, the counterclaim is and was nothing more than a foundationless, bad faith reflexive vexation and harassment of Plaintiff for Plaintiff having initiated this action – not grounded in any law nor fact as applicable to the claimed cause of action. To wit, the counterclaim's cause of action is wholly unsupported in its factual averments and as a matter of law untenable.

As this Honorable Court knows well pleadings' minimum sanctions avoidance requirements – of which the counterclaim does not meet in any respect, Plaintiff refrains from reiterating the well-known standards for sanctions herein requested. Bell Atlantic Corp. v.

Twombly, 550 U.S. 544, 127 S.Ct. 1995, n. 13 (2007); Clinton v. Jones, 520 U.S. 681, 117 S.Ct. 1636, n. 42 (1997). Simply, Plaintiff has granted Defendant and his counsel every opportunity and notice to withdraw the counterclaim, and they have refused – not because of a misunderstanding, good faith belief in an otherwise non-meritorious cause, or mistake, but rather to bully and intimidate Plaintiff.³

WHEREFORE, Plaintiff respectfully requests this Honorable Court grant Plaintiff's Motion for Sanctions consistent with the attached proposed Order.

WEISBERG LAW

/s/ Matthew B. Weisberg Matthew B. Weisberg, Esquire Attorney for Plaintiffs

³ See, Exh. B – threatening ethical ramifications for Plaintiff's mere compliance with Rule 11 and therein cover's expressed professional courtesy. (Exh. A). Notable in Respondents' missive (Exh. B), there is no explanation for the counterclaim – only threats and "argle-bargle."

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2111 Sycamore Drive Harrisburg, PA 17112

: **J**U

JURY TRIAL DEMANDED

Defendants.

CERTIFICATE OF SERVICE

I, Matthew B. Weisberg, Esquire, hereby certify that on this 31st day of October, 2013, a true and correct copy of the foregoing Plaintiff's Motion for Sanctions was served via ECF and regular mail, respectively, upon the following parties:

Christopher Paul Boyle, Esq. Marshall Dennehey Warner Coleman & Goggin 620 Freedom Business Center Suite 300 King of Prussia, PA 19406

William R. Salmon, Jr., Esq. Bucks County Office Center 1200 Veterans Highway, Suite C-0 Bristol, PA 19007

Clyde Neihart d/b/a Stealth Recovery/Right Turn Transportation 2111 Sycamore Drive Harrisburg, PA 17112 Joseph Venezia, Inc. d/b/a J.V.I. Towing and Recovery 601 E. Morre Street Norristown, PA 19401

WEISBERG LAW

/s/ Matthew B. Weisberg Matthew B. Weisberg, Esquire Attorney for Plaintiffs